

IN THE MATTER OF
GUILD INDUSTRIES CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2730. Complaint, Sept. 26, 1975-Decision, Sept. 26, 1975

Consent order requiring a St. Petersburg, Fla., manufacturer and seller of baby furniture, among other things to cease misrepresenting endorsements by the medical profession; misrepresenting savings and prices; misrepresenting the status and/or qualifications of its employees; and using scare tactics to secure merchandise orders.

Appearances

For the Commission: *Sandra L. Bird.*

For the respondents: *Stephen E. Samnick*, Parsippany, N.J.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Guild Industries Corp., a corporation, and Martin Byrd, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Guild Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 230 - 23rd St. S., St. Petersburg, Fla.

Respondent Martin Byrd is an individual and officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the manufacture, offering for sale, sale and distribution of infant feeding tables and cribs to franchisees and distributors who sell them to the public. The feeding tables are sold under the trade name "Baby Butler" and the cribs under the trade names "Converta-Crib" and "Starlighter."

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said merchandise when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have sold and distributed in commerce to franchisees and distributors who sell respondents' products to the public, various types of advertising and promotional materials including, but not limited to, flip-chart sales presentations, audio-visual demonstration materials, brochures and reprints of magazine and newspaper articles. Said promotional materials are designed to assist in and induce the sale of respondents' products. Some franchisees and distributors have added promotional materials of their own which follow the same general pattern of the materials supplied by the respondents.

Typical and illustrative of statements and representations contained in respondents' promotional materials, but not all inclusive thereof, are the following:

1. Baby Butler products are recommended by leading hospitals, doctors, nurses and pediatricians.
2. Respondents' products are being sold at less than normal retail prices; i.e., at "direct factory discounts to 65%."
3. The salesmen who sell respondents' products to the consuming public are factory demonstrators or representatives.
4. The salesmen who sell respondents' products to the public are "Safety Specialists" and have had special training in safety and safety procedures.
5. Infant fatalities caused by structural defects in conventional high chairs are a frequent occurrence.

6. The life of the prospect's child is endangered by the use of conventional high chairs.

PAR. 5. In truth and in fact:

1. Respondents' products are not, and never have been, recommended or endorsed by leading hospitals, doctors, nurses and pediatricians.

2. Respondents' products are not sold at less than normal retail or discount prices. To the contrary, their products are sold to consumers at prices approximately 100 percent higher than the prices paid by the franchisees or distributors who purchase the products direct from the respondents and therefore such products are sold to consumers at normal or above normal markups.

3. The salesmen are not employed by respondents as factory demonstrators or representatives, but are either franchisees or distributors of respondents or are salesmen for such franchisees or distributors.

4. The salesmen have no special training which would entitle them to be called "Safety Specialists."

5. Infant fatalities caused by structural defects in conventional high chairs are a relatively infrequent occurrence.

6. The life of the prospect's child is not endangered by the use of all conventional high chairs.

Therefore, the statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive.

PAR. 6. Respondents by furnishing their franchisees and distributors with sales and promotional materials have thereby placed in the hands of such franchisees and distributors, the means and instrumentalities by and through which they may mislead the public in the manner and as to the things hereinabove alleged. Respondents' franchisees and distributors have used said promotional materials in the course of sales presentations in the homes of prospective purchasers of respondents' products.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by the respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial

quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Guild Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 230-23rd St. S., St. Petersburg, Fla.

Respondent Martin Byrd is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Guild Industries Corp., a corporation, its successors and assigns, and its officers, and Martin Byrd, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or through franchisees or licensees, in connection with the advertising, offering for sale, sale or distribution of baby furniture or other articles of merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing that:
 - a. Their products have been recommended by leading hospitals, doctors, nurses and pediatricians; or misrepresenting in any manner the endorsement of their products.
 - b. Respondents' products are sold at direct factory discounts or at less than normal retail prices or at discount prices; or misrepresenting in any manner the savings that consumers will obtain by purchasing respondents' products.
 - c. Their franchisees and distributors and the agents, representatives and salesmen thereof are direct factory demonstrators or representatives; or misrepresenting in any manner the employment status of persons selling respondents' products to the consuming public.
 - d. Their franchisees and distributors and the agents, representatives and salesmen thereof are safety specialists and have had special training in safety procedures; or misrepresenting in any manner the qualifications of persons engaged in the sale of respondents' products to the consuming public.
 - e. Infant fatalities caused by structural defects in conventional high chairs are a relatively frequent occurrence.
 - f. The lives of children are endangered by the use of conventional high chairs.
2. Inducing the purchase of respondents' products by employing scare tactics through the preparation and dissemination of sales and promotional materials, newspaper clippings and accident pictures which may tend to or do unduly instill fear in members of the purchasing public as to the dangers of the use of conventional high chairs; or misrepresenting in any manner the safety of competitors' products.

Provided, however, That respondents may make available to prospective customers reports or publications of Federal, State or local government agencies or other official and recognized organizations devoted to consumer safety, and which publications and reports are not more than three (3) years old when used.

3. Supplying to or placing in the hands of respondents' distributors, franchisees or salesmen, brochures, sales materials, flip-charts, slides or any other advertising or promotional materials which are intended for use or which may be used in connection with the sales of respondents' products to the consuming public and which contain any of the representations prohibited in Paragraphs 1 and 2 hereof.

It is further ordered, That respondents herein shall forthwith distribute a copy of this order to each of their officers and to respondents' present and future representatives, distributors, franchisees and dealers engaged in the sale of respondents' products, and secure from each of such persons a signed statement acknowledging receipt of said order.

It is further ordered, That the respondents herein shall direct all of their distributors, franchisees or dealers, to remove and destroy or return to respondents all brochures, sales manuals, flip-charts, or any other advertising materials disseminated to them by the respondents, as described in Paragraph 3 above, of this order and which contain any of the representations prohibited in Paragraphs 1 and 2 above of this order; and in the event any such distributor, franchisee or dealer refuses to comply therewith respondents shall in that event cease to furnish and supply their products to such distributor, franchisee or dealer for resale to the public until such time as compliance with this requirement is obtained.

It is further ordered, That:

(a) Respondents herein shall notify all of their distributors, franchisees, or dealers that respondents are obligated by this order to cease to furnish and supply their products for resale to the public by any distributor, franchisee, or dealer who fails to comply with the requirements of the Federal Trade Commission's Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. §429, 37 Fed. Reg. 22934, which is herein incorporated by reference;

(b) In the event that any such distributor, franchisee, or dealer refuses or fails to comply with the requirements of the aforesaid Trade Regulation Rule, respondents shall in that event cease to furnish and supply their products to such distributor, franchisee, or dealer for resale to the public until such time as compliance with the requirements of said Trade Regulation Rule is obtained.

It is further ordered, That respondents shall maintain, for at least a two (2) year period, copies of all literature, brochures, visual aids and any other sales or promotional materials used in connection with the promotion or sale of respondents' products, to include copies of any materials made available or distributed to consumers in the course of such promotion or sale; and such materials shall be made available to

Federal Trade Commission representatives for inspection upon request in writing or by visitation during respondents' regular business hours.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.
